

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEON JACKSON,
Petitioner,
v.
WARDEN ROBERT FOX, KAMALA
HARRIS,
Respondents.

Case No.: 16-CV-1288-AJB-DHB

ORDER:

**(1) ADOPTING THE REPORT AND
RECOMMENDATION, (Doc. No. 12);**

**(2) GRANTING RESPONDENT’S
MOTION TO DISMISS, (Doc. No. 9);**

**(3) DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS, (Doc.
No. 1); AND**

**(4) DENYING CERTIFICATE OF
APPEALABILITY**

On May 27, 2016, Petitioner Leon Jackson (“Petitioner”), a state prisoner proceeding *pro se* and *in forma pauperis*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (“Petition”). (Doc. No. 1.) The Petition seeks relief from Petitioner’s 2012 conviction in San Diego Superior Court, Case No. SCE320691, following a jury trial in which Petitioner was found guilty of robbery and was subsequently sentenced to a prison

1 term of nine years. Respondent filed a motion to dismiss on September 12, 2016, (Doc.
2 No. 9), which Petitioner opposed on October 17, 2016, (Doc. No. 11).

3 The Court referred the matter to the Magistrate Judge, who issued a report and
4 recommendation (“R & R”). (Doc. No. 12.) The R & R concluded that Respondent’s
5 motion should be granted. (*Id.* at 8.) The parties were instructed to file written objections
6 to the R & R no later than January 6, 2017. (*Id.*)


7 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district
8 judge’s duties in connection with a magistrate judge’s report and recommendation. The
9 district judge must “make a de novo determination of those portions of the report . . . to
10 which objection is made,” and “may accept, reject, or modify, in whole or in part, the
11 findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C);
12 *see United States v. Remsing*, 874 F.2d 614, 617–18 (9th Cir. 1989). However, in the
13 absence of timely objections, the Court “need only satisfy itself that there is no clear error
14 on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b)
15 advisory committee’s note (1983); *see also United States v. Reyna-Tapia*, 328 F.3d 1114,
16 1121 (9th Cir. 2003) (“The statute makes it clear that the district judge must review the
17 magistrate judge’s findings and recommendations de novo *if objection is made*, but not
18 otherwise.” (emphasis in original)). Here, neither party filed timely objections to the R &
19 R. Having reviewed the R&R, the Court finds it thorough, well-reasoned, and contains no
20 clear error. Accordingly, the Court: (1) **ADOPTS** the R & R, (Doc. No. 12); (2) **GRANTS**
21 Respondent’s motion to dismiss, (Doc. No. 9); and (3) **DISMISSES** the Petition **WITH**
22 **PREJUDICE**, (Doc. No. 1).

23 When a district court enters a final order adverse to the applicant in a habeas corpus
24 proceeding, it must either issue or deny a certificate of appealability, which is required to
25 appeal a final order in a habeas corpus proceeding. 28 U.S.C. § 2253(c)(1)(A). A certificate
26 of appealability is appropriate only where the petitioner makes “a substantial showing of
27 the denial of a constitutional right.” *Miller-El*, 537 U.S. at 327 (quoting 28 U.S.C. §
28 2253(c)(2)). Under this standard, the petitioner must demonstrate that reasonable jurists

1 could debate whether the petition should have been resolved in a different manner or that
2 the issues presented were adequate to deserve encouragement to proceed further. *Slack v.*
3 *McDaniel*, 529 U.S. 473, 483–84 (2000). Here, the Court finds that reasonable jurists could
4 not debate the Court’s conclusion to dismiss with prejudice Petitioner’s claims and
5 therefore **DECLINES** to issue a certificate of appealability.

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7 **IT IS SO ORDERED.**

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9 Dated: February 6, 2017

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11 Hon. Anthony J. Battaglia
12 United States District Judge
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